

## MARGUERITE R. McELROY

OCTOBER 28 (legislative day, OCTOBER 25), 1943.—Ordered to be printed

Mr. EASTLAND, from the Committee on Claims, submitted the following

### REPORT

[To accompany H. R. 2190]

The Committee on Claims, to whom was referred the bill (H. R. 2190) for the relief of Marguerite R. McElroy, having considered the same, report favorably thereon and recommend that the bill do pass, with the following amendment:

Page 1, line 6, strike out the figures "\$150" and insert in lieu thereof the figures "\$98.75".

Since the Citizens Mutual Insurance Co. has already paid Mrs. McElroy the sum of \$51.25 under its contract, your committee have accordingly deducted this amount from the \$150 originally claimed, thereby reducing the amount to \$98.75.

The facts will be found fully set forth in House Report No. 713, Seventy-eighth Congress, first session, which is appended hereto and made a part of this report.

[H. Rept. No. 713, 78th Cong., 1st sess.]

The Committee on Claims, to whom was referred the bill (H. R. 2190) for the relief of Marguerite R. McElroy, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

At the end of bill strike out period and add ": *Provided*, That no part of the amount appropriated in this Act in excess of 10 per centum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The purpose of the proposed legislation is to pay to Marguerite R. McElroy, of Uxbridge, Mass., the sum of \$150, in full settlement of all claims against the United States for property damage sustained by her as a result of an automobile accident which occurred on October 7, 1940, involving a Work Projects Administration vehicle, at Providence, R. I.

## STATEMENT OF FACTS

On October 7, 1940, a truck, operated by an employee of the Work Projects Administration, was being used to transport two buckets which weighed approximately 900 pounds each. The truck was being driven along Glenbridge Avenue, Providence, R. I., toward the project site at a speed of approximately 20 miles an hour when one of the buckets slid over the tail gate of the truck into the street; and the automobile of Marguerite R. McElroy was approaching from the opposite direction on Glenbridge Avenue when the bucket fell from the truck, striking and damaging the left rear fender, left door, and left rear portion of the body of the automobile.

The cost of repairing her automobile was \$101.25. Her insurance carrier paid the sum of \$51.25 under its contract which contained a \$50 deductible clause. Mrs. McElroy paid the deductible amount. The Worcester Buick Co. states under oath that the damaged automobile was worth \$50 less after the accident than before the accident.

Therefore, your committee recommends favorable consideration to the bill, and append hereto report of the Federal Works Agency, together with other pertinent evidence.

FEDERAL WORKS AGENCY,  
Washington, June 21, 1943.

HON. DAN R. McGEHEE,

*Chairman, Committee on Claims, House of Representatives.*

DEAR MR. McGEHEE: This is with further reference to your letter of March 13, 1943, addressed to the Commissioner of Work Projects, enclosing a copy of H. R. 2190, entitled "A bill for the relief of Marguerite R. McElroy."

The bill proposes to appropriate to Marguerite R. McElroy, of Uxbridge, Mass., the sum of \$150, in full settlement of all her claims against the United States for property damage sustained by her as a result of an automobile accident which occurred on the 7th day of October 1940, and involved a Government-owned motor vehicle operated by an employee of the Work Projects Administration.

The evidence adduced as a result of an investigation conducted by the Work Projects Administration discloses that a truck, operated by an employee of the Work Projects Administration, was being used to transport two buckets which weighed approximately 900 pounds each; that the truck was being driven along Glenbridge Avenue, Providence, R. I., toward the project site at a speed of approximately 20 miles an hour when one of the buckets slid over the tail gate of the truck into the street; and that the automobile of Marguerite McElroy was approaching from the opposite direction on Glenbridge Avenue when the bucket fell from the truck, striking and damaging the left rear fender, left door, and left rear portion of the body of the automobile.

The cost of repairing Mrs. McElroy's automobile was \$101.25. Her insurance carrier paid the sum of \$51.25 under its contract, which contained a \$50 deductible clause. Mrs. McElroy paid the deductible amount, and then presented a claim, in the sum of \$166.25 to the Work Projects Administration. In support of her claim, Mrs. McElroy submitted a letter from the Worcester Buick Co. which states that the damaged automobile was worth \$50 less after the accident than before the accident.

The accident occurred as the result of the negligence of an employee of the Work Projects Administration and the amount claimed seems reasonable. In the event this legislation is amended to show that the payment of \$150 makes full settlement of the claims against the United States by Mrs. Marguerite R. McElroy and the Citizens Mutual Insurance Co., this agency recommends that H. R. 2190 receive favorable consideration by the Congress.

The Bureau of the Budget advises me that the enactment of the proposed legislation would not be in conflict with the program of the President.

Sincerely yours,

ALAN JOHNSTONE, *General Counsel.*

SEPTEMBER 8, 1942.

Re Mrs Marguerite R. McElroy, 10 Cross Street, Uxbridge, Mass.

MR. STEPHEN J. CASEY,

*Providence, R. I.*

DEAR SIR: Reference is made to your letter of August 28, 1942, relative to the claim in the sum of \$166.25, of your above-named client for damage to an automobile.

The itemized repair bill submitted by claimant to establish the cost of the repairs necessitated by the accident, indicated that the left rear fender, left door, and left rear portion of the body was damaged, and that the glass in the door was broken. The bill also indicated that the door glass was replaced, and that the damaged fender was replaced with a new fender. The dents were removed from the door and the left rear portion of the body, and the side of the car and the new fender were painted to match the rest of the car.

There is no indication on the bill that there was any damage to any of the mechanical parts of the automobile. The only damage appears to have been to the fender and body, and such damage can be repaired by modern body repair shops so that no trace of the previous accident will remain.

The affidavit of Mr. Charles B. Lewis, sales manager of the Worcester Buick Co., presents Mr. Lewis' opinion that after repairs were made the car had a value of \$50 less than it had before it was damaged. However, no explanation is given of the method by which the sum of \$50 was determined as the amount of this alleged loss.

After a careful review of the evidence, the Administration determines that the damage to the car caused by the accident with the Work Projects Administration truck was not such as would make it impossible to restore to its former condition, and that after such repairs were effected, the value of the automobile should not have been any less than it was prior to the accident. Accordingly, the Administration affirms its previous decision disallowing this portion of the claim.

With reference to the portion of the claim in the sum of \$51.25, representing the amount paid to Mrs. McElroy by the Citizens Mutual Insurance Co., the acceptance by Mrs. McElroy of the sum of \$50, which has been offered in settlement, would not affect any rights which the insurance company would have in subrogation. The company's rights are separate and distinct from those of Mrs. McElroy, and subrogated parties are afforded the same remedies and opportunities for presenting claims. Accordingly, the insurance company should have presented its claim for this amount. However, the applicable statute, section 19 of the Emergency Relief Appropriation Act, fiscal year 1943, Public Law 651, approved July 2, 1942, specifically limits the authority of the Administration to consideration of only those claims which are presented within 1 year from the date of accrual thereof. The insurance company has not presented its claim within the period prescribed by the applicable statute. In view thereof, the Administration is without authority to consider the company's claim should it be subsequently presented.

In view of the foregoing, the Administration remains of the opinion that the loss sustained by your client is limited to \$50, and upon receipt of the settlement agreement in that amount, the claim will be determined.

Yours very truly,

WM. E. LINDEN, *General Counsel.*

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WORCESTER BUICK CO.

WORCESTER, MASS., August 10, 1942.

Mrs. MARGUERITE R. McELROY,  
*Uxbridge, Mass.*

DEAR MRS. McELROY: According to our records we wrote you October 16, 1940, informing you that it would be necessary to reduce the allowance on your used 1940 Buick, model 40/48, because of its having been involved in an accident. Prior to the accident we had made you an allowance on your car but reduced this allowance \$50 knowing that an accident depreciates the value of a car.

On December 1, 1941, we wrote you telling you that in our experience over a number of years we had always found that a used-car purchaser would not pay as much money for a car that had been involved in an accident as one which had been free from an accident, and furthermore stated the proof of the importance of this fact was found in the fact that when selling a used car which we definitely knew had not been in accident we stressed this fact.

We have always felt that not only has the trade-in value of a car been affected by an accident, even though properly repaired, but that its intrinsic value to the owner has depreciated. In your particular case where your car had been given such exceptional care, had been serviced regularly and never neglected in any way the value of the car to you could not be the same as before the accident. It would be only natural for you to feel that having been involved in an accident

and later repaired that you could not have the same confidence in the dependability and durability of the car.

Very truly yours,

WORCESTER BUICK Co.,  
CHARLES B. LEWIS, *Sales Manager.*

AUGUST 10, 1942.

STATE OF MASSACHUSETTS,  
*County of Worcester, ss:*

Personally appeared before me Charles B. Lewis, who swears this statement to be true to the best of his knowledge and belief.

HARRY T. GRAY,  
*Justice of the Peace.*

My commission expires August 20, 1943.

NOVEMBER 24, 1941.

MRS. MARGUERITE R. McELROY,  
*10 Cross Street, Uxbridge, Mass.*

MY DEAR MRS. McELROY: There has been received in this office for consideration your claim, in the sum of \$166.25, for personal injuries and for damage to an automobile.

It appears that the amount claimed includes an item in the sum of \$15 for a doctor's bill. The Administration regrets to inform you that there exists no provision of law authorizing it to consider claims for personal injuries to third parties, or for medical, or other expenses, resulting therefrom. Such claims fall within the well-established rule that the Government of the United States, acting within its sovereign capacity, is not responsible for the torts of its officers or employees.

Relative to the damage to your automobile, it is noted that the cost of effecting repairs, as evidenced by the receipted bill rendered by Speed's Service Garage, Providence, R. I., is \$101.25. In addition to this sum, your claim also includes an item in the amount of \$50, representing a reduction in the trade-in value of your automobile.

The Administration is of the opinion that the measure of damage is the cost of restoring the automobile to its condition immediately prior to the accident. Since no evidence is submitted to establish that, after the repairs were made, the automobile was not in as good condition as it was before it was damaged, the Administration is not willing to allow the \$50 for depreciation.

Item 13 of the Work Projects Administration Claim Form 950, revised, indicates that your insurance carrier, Citizens Mutual Insurance Co., Concord, Mass., paid \$51.25 of the cost of repairing the damage to your automobile. Therefore, it is assumed that the policy included a deductible clause in the sum of \$50. In cases of this type, where the loss sustained by the claimant is limited to the fixed amount of a deductible clause of an insurance contract, it is the policy of the Administration to consider only the deductible amount, since any sum in excess of that amount is deemed properly for consideration by the insurance carrier.

In view of the foregoing, the Administration determines that the loss sustained by reason of damage to your automobile is limited to \$50, the actual expenditure made by you. Accordingly, the Administration is willing to allow that amount, and, for that purpose, there is enclosed a settlement agreement, in the sum of \$50, for execution by you and return to this office.

This office desires to be advised whether it is correct in its assumption that the policy on your automobile included a \$50 deductible clause. If the policy contained no such clause, an explanation as to the reason why the company paid only \$51.25 of the cost of repairing the damage should be submitted.

When the settlement agreement, properly executed, and the information requested are received in this office, the claim will be determined.

Yours very truly,

WM. E. LINDEN, *General Counsel.*

I, Marguerite R. McElroy, do hereby agree to accept \$50, in full settlement of my claim, in the sum of \$166.25, against the Government of the United States, for damage to my automobile, caused by the act of an employee of the Work Projects Administration on October 7, 1940.

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Marguerite R. McElroy.

Dated: This ----- day of -----, 1941.

WORCESTER BUICK Co.,  
Worcester, Mass., October 16, 1940.

Mrs. MARGUERITE R. McELROY,  
Uxbridge, Mass.

DEAR MRS. McELROY: We have today reappraised your used 1940 Buick, model 40/48. While on September 20, 1940, when you placed your order for a new 1941 Buick we made you an allowance of \$809.75, it is necessary for us to allow you \$50 less for your car, in other words, \$759.75.

We are doing this in view of the fact that an accident always depreciates the value of a car.

Yours very truly,

WORCESTER BUICK Co.,  
CHARLES B. LEWIS,  
Sales Manager.

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NARRAGANSETT AVENUE WAREHOUSE,  
October 7, 1940.

ACCIDENT REPORT

Truck No. 420, driven by Nicholas Marfeo, had been to Cranton Sewers and picked up two Dempster buckets to be transferred to Basswood Avenue. The truck had got as far as Glenbridge to a point at about 500 feet south of the bridge when one of the buckets slipped off rear of truck landing on handle side of basket. At right that time a Massachusetts car came from opposite direction and as the bucket was falling it struck the car causing damage to car body, door, and fender; also breaking glass in door. A Marguerite R. McElroy, of 10 Cross Street, Uxbridge, Mass., complained of a shake-up but refused any kind of medical aid. Car owner, Marguerite R. McElroy, 10 Cross Street, Uxbridge, Mass., Reg. Mass. 65159.

Driver: Vincent McElroy, 10 Cross Street, Uxbridge, Mass.

NICHOLAS MARFEO.

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PROVIDENCE, R. I., October 8, 1940.

My name is Nicholas Marfeo, I am 37 years of age and I live at 23 Oak Street, Providence, R. I.

I am employed as a truck driver for Work Projects Administration, stationed at Mount Pleasant Avenue Garage. On October 7, 1940, I was operating a Ford dump truck, on Glenbridge Avenue, Providence, R. I., traveling toward Manton Avenue from Hartford Avenue about 500 feet from the bridge on Glenbridge Avenue, the truck had in the body, two Dempsey Dumpster buckets, weighing each about 900 pounds. I was traveling about 20 miles per hour, when I heard a bang, at rear of my truck. I stopped, got from the truck and saw that one of the buckets had slid out of truck, over tailgate to street, when it fell it had struck the side of a passenger car, traveling in the opposite direction and just passing my truck, as the bucket fell out.

It had caused damage to the side of the car. No one was hurt. A woman passenger was shaken up.

When I had loaded these buckets the tailgate had been pulled nearly shut, and had been fastened there, but apparently the tailgate had loosened up and allowed the bucket to slide to the street. At this point the roadway is bumpy, just patched up. I had carried these buckets about 4 miles, when this happened. I was alone in the truck.

I hold an operator's permit from the State of Rhode Island—#C-3698.

I have read over the above and swear it to be true.

NICHOLAS MARFEO.

Witness to signature:

ELWOOD W. KELLEY,  
Providence, R. I.

SPEED'S SERVICE GARAGE,  
North Providence, R. I., October 15, 1940.

Sold to Mrs. Vincent McElroy (Marguerite R. McElroy) 10 Cross Street, Ux-  
bridge, Mass.

1 rear left fender-----	\$9. 20
1 left door glass-----	8. 55
Hoist car from Glenbridge Avenue to shop-----	5. 00
Straighten rear left of body, door panel, install window glass, install rear fender, repaint side of car and fender-----	70. 00
Remove rear wheel, test hub in lathe, readjust brakes, etc-----	8. 50
	<hr/> 101. 25

This is a true bill of damages as repaired by Speed's Service Garage by Sylvester  
E. Villa, partner.

SYLVESTER E. VILLA.

State of Rhode Island and Providence Plantation, subscribed and sworn to  
before me this 16th day of October 1940.

JAMES J. WALSH.  
Notary Public.

Paid in full by check No. 458, October 16, 1940.

H. HEDGE

